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## Hilal and Halal: How to manage Islamic Pluralism in Indonesia?

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### Keywords

pluralism, islamic, halal, hilal, indonesia, manage

### Disciplines

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# Hilal and Halal: How to Manage Islamic Pluralism in Indonesia?

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The paper examines the tension amongst the Indonesian government and Islamic organisations in dealing with the plurality of interpretation within Islamic tradition and at the same time maintaining the unity and harmony of the Muslim ummah. I provide two case studies here: first, the issue of determining the first and the end of Ramadan and also 10 Zul Hijjah (for Idu al-Adha). Second, who has the authority to issue halal certificate? Due to different methods of hisab (astronomical calculation) and ru'yah (sighting a new crescent), Islamic organisations (Muhammadiyah, Nahdlatul Ulama and Majelis Ulama Indonesia) have produced different fatwas. At the same time, the Government has to make announcement on which dates to begin or to end fasting. With regard to the second issue, there is currently a tension between the Government and the MUI as the first thinks it falls into its authority whereas the latter insists that halal certificate is a written fatwa which belongs to its 'jurisdiction'.

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**KEYWORDS:** halal, hilal, pluralism, Indonesia, fatwa

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## I. Introduction

Diversity among Muslim people is a blessing (*ikhtilafu ummati rahmah*) – a statement attributed to the Prophet Muhammad.<sup>1</sup> This means that juristic differences provide Muslims with a few options, based on their situations and conditions. Islamic tradition takes pride in *usul al-fiqh* (Islamic legal theory) and *fiqh muqarin* (comparative Islamic law), developed for studying the differences in interpretations of the Qur'an and differences in the transmission of the Hadith, as well as differences in the methods (*manhaj*) of interpretation.<sup>2</sup>

As Islamic rulings are claimed to be based on God's revelations, how is it there are many different opinions within Islam? Throughout the history of Islam, even in the era of the Prophet, there have been juristic differences among the companions of the Prophet. Such diversity not only existed, but was also respected. Two different approaches emerge from a story of how companions of the Prophet have interpreted the Prophet's direct instruction to them:

One example of such an incident has been recorded by both al Bukhari and Muslim. During the Battle of the Confederates, the Prophet is reported to have said to his Companions: 'Do not perform the mid-afternoon (*ʿasr*) prayer until you get to the [place of] Banu Qurayzah.' While still on their way, the time of the prayer came. Some of the companions said, 'We will not perform the prayer until we get to the [place of] Banu Qurayzah' while some others said, 'We shall pray. That [saying of the Prophet] will not prevent us [from praying now].' The matter was later brought before the Prophet and he did not disapprove of either group.<sup>3</sup>

Taha Jabir al-Alwani explains the significance of this story:

It is clear from this incident that the Companions of the Prophet had split into two groups over the interpretation of the Prophet's instructions - one group adopting the literal or explicit meaning of the injunction (*ibarat al-nass*) while the other group derived a meaning from the injunction, which they considered suitable for the situation. The fact that the Prophet approved of both groups showed that each position was legally just as valid as the other. Thus, a Muslim who is

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<sup>1</sup> Ali ibn Abd-al-Malik al-Hindi, *Kanzul 'Umal* (Beirut: Dār al-Kutub al-'Ilmiyah, 1998), Vol. 10 at 136.

<sup>2</sup> M. Khalid Mas'ud, "Ikhtilaf al-Fuqaha: Diversity in Fiqh as a Social Construction", online: <<http://www.musawah.org/docs/pubs/wanted/Wanted-MKM-EN.pdf>>.

<sup>3</sup> Taha Jabir al-Alwani, *The Ethics of Disagreement in Islam* (Herndon, Virginia: The International Institute of Islamic Thought, n.d.), online: <[http://www.usc.edu/dept/MSA/humanrelations/alalwani\\_disagreement/chapter3.html](http://www.usc.edu/dept/MSA/humanrelations/alalwani_disagreement/chapter3.html)>.

faced with a particular injunction or text (*nass*) can either adopt the literal or manifest (*zahir*) meaning of the text, or he may make interpretations which are appropriate to the text, by using his ability to reason.<sup>4</sup>

A ruling of the Qur'an or Hadith may be conveyed in a text which is either clear, or in language which is open to different interpretations. A definitive text is one which is clear and specific; it has only one meaning and admits of no other interpretations. It is known as *Qat'i*. The rulings of the Qur'an on the essentials of the faith, such as ritual, are all *Qat'i* – their validity may not be disputed by anyone, every Muslim must exercise them, and they are not open to *ijtihad* (independent legal reasoning). Thus there is no disagreement at *Qat'i* cases. The second type of rulings is that which is considered speculative (*Zanni*). A single word in a Qur'anic text or Hadith may have several different meanings which have different legal consequences. At this level, *ijtihad* is required to understand the most suitable meaning of a particular Islamic text (*nass*).<sup>5</sup>

The methodology of *ijtihad* has been developed gradually throughout the history of Islamic law. The scholars of various schools of thought differed in the principles and rules they used.<sup>6</sup> For instance, when the jurist is faced with two conflicting texts relevant to a particular case, the solution to which is pending, he must attempt to reconcile the texts by harmonising them, so that both may be brought to bear in resolving it. However, if the texts prove to be so contradictory that it is impossible to compromise or harmonise the texts, the jurist may resort to the theory of abrogation (*naskh*), with a view to determining which of the two texts repeals the other. Thus abrogation involves the replacement of one text, which would have otherwise had a legal effect, by another text embodying a legal value contradictory to the first. However, not all jurists would agree with the validity of abrogation approach.<sup>7</sup>

Scholars sometimes also went beyond the texts. For instance, some scholars adopted the principle of *masalih al-mursalah* (public interest), which is neither commanded nor prohibited in any primary source, but is based on the conviction

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<sup>4</sup> *Ibid.*

<sup>5</sup> Bad al-Din al-Zarkashi, *Bahr al-Muhith fi Usul al-Fiqh* (Beirut: Dar al-Kutub al-Ilmiyah, 2007), Vol. 1 at 140; see also M. Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Cambridge Islamic Texts Society, 1991) at 19-20.

<sup>6</sup> More information on the method of *ijtihad* and its application can be read in Mustafa Sa'id al-Khin, *Atsar al-Ikhtilaf fi al-Qawa'd al-Usuliyyah fi Ikhtilaf al-Fuqaha* (Beirut: Mu'assasah al-Risalah, 1982); Muhammad Fathi al-Durayni, *Buhuts Muqaranah fi al-Fiqh al-Islami wa Usulih* (Beirut: Mu'assasah al-Risalah, 1994); Muhammad Salam Madkur, *Manahij al-Ijtihad fi al-Islam* (Kuwait: al-Matba'ah al-'Ashriyah, 1974).

<sup>7</sup> Wael Hallaq, *A History of Islamic Legal Theories* (Cambridge: Cambridge University Press, 1997) at 68.

that all the laws of the *Shari'a* are intended for realising the welfare, or the good, of mankind. Others did not take this principle as a valid source of law, and this led to actual differences in formulating laws.<sup>8</sup> Consequently, different methods of interpretation will lead to different outcomes. This means that it is very common in Islamic law tradition to have more than one opinion in a case. However, is it true that different opinions will bring a blessing to Muslims, especially for those at the grass-root level, who may become confused when there are different, often conflicting, *fatwas*?

The main aim of my paper is to examine the tension between the Indonesian government and Islamic organisations in dealing with the plurality of interpretations within Islamic tradition, and at the same time maintaining the unity and harmony of the Muslim *ummah* (communities). I provide two case studies here: first, the issue of determining the first day and the end of Ramadan and also 10 Zul Hijjah (for Idul Adha). Owing to different methods of *hisab* (astronomical calculation) and *ru'yah* (sighting a new crescent moon), Islamic organisations (Muhammadiyah, Nahdlatul Ulama and Majelis Ulama Indonesia) have produced different *fatwas*. At the same time, the Government must make an announcement on which dates to begin or to end the fasting. The questions are: how does the government decide which *fatwa* to choose, and what are the reactions of Islamic organisations when their views differ with the position of the government? There is also tension in society in celebrating Idul Fitri and Idul Adha on different dates. How far should the government go to accommodate such different views, to maintain harmony in the community?

Second, in the case of the *halal* certificate, the Indonesian Ministry of Religious Affairs (MORA), together with the Parliament, is still examining who should have the authority to investigate all the ingredients, to issue the *fatwa*, and to put a *halal* label on a product. Currently, MUI issues a *halal* certificate based on a voluntarily application from the company. This might be considered as an unofficial law. Once the Parliament has passed a Bill, the practice might become official and compulsory. This would have the effect that a particular interpretation of the *halal* quality of meat and non-meat products would become the official law. How about the other interpretations? This question of authority reflects the tension and dilemma of the role of the Government, particularly the Ministry of Religious Affairs.

Firstly, I will examine briefly the three main Islamic organisations in Indonesia, including their methods of issuing *fatwas*. This discussion is important to assist our understanding on their different interpretations and interactions with the Ministry of Religious Affairs. Secondly, I will evaluate the two case studies proposed in this paper: on the determination of *hilal* in Ramadan, Syawal and

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<sup>8</sup> See Husayn Hamid Hasan, *Nazhariyat al-Maslahah fi al-Fiqh al-Islamy* (Mesir: Dar al-Nahdah al-'Arabiyah, 1971).

Zul Hijjah; and on the issue of the *halal* certificate. Finally, I will offer some observations on how to deal with contestation of Islamic authority in contemporary Indonesian Islam. I argue that in the first case, the right to make decisions on *halal* should be given to the Religious Court, not to the Government. In the second case, I argue that the decision on issuing a *halal* certificate should be open to many *halal* certifiers, not be the single monopoly of MUI.

## II. *Fatwas* and Islamic Organisations

Intra-religious pluralism refers to views held by specific schools or denominations *within* a major faith, about the validity or truth of other schools or denominations within the same major faith tradition. Intra-religious pluralism in Indonesian Islam is best illustrated by the establishment of the three main Islamic organisations. In Indonesia, although individual Islamic scholars still issue *fatwas*,<sup>9</sup> it is very common that they identify themselves with one of the three major Islamic organisations. The first is Nahdlatul Ulama (NU) as the biggest Islamic organisation in Indonesia, numbering 60 million supporters; and second is Muhammadiyah, established in 1912, the organisation which represents modernist Muslims. It has 30 million supporters in Indonesia, and has built many schools, universities and hospitals. The third institution, established in 1975, is one supported by the Government and including both modernist and traditionalist ulama; Majelis Ulama Indonesia (MUI). Through their *fatwas*, these three Islamic organisations have always given responses to the problems of Indonesian Muslims, over more than 70 years.<sup>10</sup>

*Fatwa* production is based on a question pertaining to Islamic law as asked by an individual inquirer (*mustafti*), by a judge (*qadi*), or by a government authority or corporate entity.<sup>11</sup> As Indonesia does not have a Grand Mufti like Egypt or Saudi Arabia,<sup>12</sup> it is possible to have many *fatwas* in Indonesia covering

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<sup>9</sup> See R. Michael Feener, *Muslim Legal Thought in Modern Indonesia* (Cambridge: Cambridge University Press, 2007).

<sup>10</sup> See M.B. Hooker, *Indonesian Islam: Social Change Through Contemporary Fatāwā* (Sydney: Allen & Unwin, 2003).

<sup>11</sup> On *adab al-mufti* (etiquette of mufti) see Alexandre Caeiro, "The Shifting Moral Universes of the Islamic Tradition of Iftā': A Diachronic Study of Four Adab al-Fatwā Manuals" (2006) 96 (4) *The Muslim World* 661–685.

<sup>12</sup> In Egypt, for instance, the *Dar al-Ifta* is a government agency, established since 1895, charged with issuing Islamic legal opinions on any question to Muslims who ask for *fatwas*. The agency issues around 5,000 *fatwas* a week, including both official *fatwas* that the Egyptian Mufti Sheikh Ali Gomaa (b. 1951) crafts on important issues and more routine *fatwas* handled via phone and Internet by a dozen or so subordinate muftis. In Saudi Arabia, in 1971 King Faisal established the Permanent Committee for Islamic Research and *Fatwas* (*al-Lajnah ad-Da'imah li al-Buhuth al-'Ilmiyyah wal-Ifta*) whose task is to issue *fatwas*. Currently, its Chair is Sheikh 'Abd al-Aziz (b. 1940). He is labelled as Grand Mufti of Saudi Arabia.



one case.<sup>13</sup> Before issuing *fatwas*, each organisation mentioned above holds a meeting attended by its ulama and, if necessary, other scholars. They discuss the subject and, if consensus is reached, a *fatwa* is issued at the conclusion of the meeting.

Some Muslims might view diversity as part of the rich tapestry of religious experience, which matches the norms of Islamic law that an “*ijtihad* is not reversible” (*al-ijtihad la yunqad*).<sup>14</sup> This means that one ruling of *ijtihad* is not reversible by another ruling of *ijtihad*. Suppose that one scholar from the Syafi’i school has issued his legal advice on the basis of his own *ijtihad*, in the absence of a clear text (*Qat’i*) from the Qur’an or the Hadith to determine the issue. If another scholar from the same or a different school looks into the case, and his *ijtihad* leads him/her to a different conclusion on the same issue, then, provided that the initial decision does not violate any of the rules that govern the propriety of *ijtihad*, a mere difference of opinion on the part of the new scholar, or a similar *ijtihad* that he might have attempted, does not affect the authority of the initial *ijtihad*.

This legal maxim is important in the context of Indonesian *fatwas*, since it is possible a *fatwa* from one organisation may differ from those of other organisations. It can also happen that a *fatwa* issued from the national organisation is different from one given by a provincial organisation. Again, a *fatwa* from one provincial branch may be at variance with a *fatwa* from another province, even though both belong to the same organisation. Therefore, it is possible to have many *fatwas* covering one case. It is interesting to note that both the MUI and the NU state that each *fatwa* has equal status, and cannot cancel out others. This is matched with the maxim above that “*ijtihad* is not reversible” (*al-ijtihad la yunqad*). Thus, a *fatwa* from the national organisation cannot cancel one from a provincial branch. This indicates the element of democracy and tolerance toward other opinions.

Accordingly, to the extent that *fatwas* are contestable, a dissatisfied questioner might approach other Muslim scholars for a second opinion, while opponents might seek out different scholars to vindicate their respective positions. If differences of opinion operate in a healthy framework they can enrich the Muslim mind and stimulate intellectual development. They can help to expand perspectives and make us look at problems and issues in their wider and deeper

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<sup>13</sup> More information on Indonesian *fatwas* can be found in Nadirsyah Hosen, “Collective *Ijtihad* and Nahdlatul Ulama” (2004) 6 *New Zealand Journal of Asian Studies* 5-26; Nadirsyah Hosen, “Behind the Scenes: *Fatwas* of Majelis Ulama Indonesia (1975-1998)”, (2004) 15 *Journal of Islamic Studies* 147-179; see also Nadirsyah Hosen, “Revelation in a Modern Nation State: Muhammadiyah and Islamic Legal Reasoning in Indonesia” (2002) 4 *Australian Journal of Asian Law* 232-258.

<sup>14</sup> Muhyi al-Hilal Sarhan, *al-Qawa'id al-Fiqhiyah* (Iraq: Jami'ah al-Baghdad, 1987) at 64.

ramifications, and with greater precision and thoroughness. However, other Muslims insist that there is only one correct way to do things, which happens to be their own particular way. They are unable to look at matters in a balanced, holistic way and see the various dimensions of an issue.

Both traditionalist and modernist Muslims are represented in the MUI. For instance, 'ulama from Muhammadiyah, Nahdlatul Ulama and even individual unaffiliated ulama are accommodated.<sup>15</sup> This makes the MUI "full of colour". It is interesting to see the "colour" of the MUI when the *fatwa* of the MUI differs from the *fatwa* of the NU and/or the Muhammadiyah. For example, how can a Muhammadiyah or NU ulama issue different *fatwas* to those of the MUI, whilst at the same time being a member of the *Fatwa* Committee of the MUI? In the context of Islamic legal theory, the question might be: Is it possible for a Muslim scholar to espouse two opposing opinions regarding a particular case? In attempting to answer this question, the author of *al-Ihkam fi usul al-Ahkam*, Sayf al-Din al-Amidi, developed the following disjunctive scheme.<sup>16</sup> Either the two contradictory statements are both found in written texts, or they are both transmitted orally, or one is found in a written text and the other is transmitted orally.

In the case of different *fatwas* of the NU, the Muhammadiyah and the MUI, since they appear in written texts, only that part of al-Amidi's scheme which applies to statements found in written texts will be discussed. Accordingly, either the two conflicting *fatwas* were written at two different times, or they were written at one and the same time. If the former is the case, then either the date of writing of the two statements is known, in which case the later statement supersedes the earlier one, or it is not known. If the date of writing is not known, then one must be regarded as superseding the other, and since the identity of the superseding statement is not known, the follower must suspend judgment as to which statement is authoritative until evidence of the chronological order of the statements emerges.

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<sup>15</sup> Whilst the MUI's main role during Sieharto's New Order was to be a "bridge" between Muslim communities and the Government, during the 2000s MUI sees itself as providing a big tent for all Islamic organisations, including small and fundamentalist groups. In other words, MUI is moving from maintaining a relationship between Muslim and the Government to maintaining a relationship amongst Islamic organisations. K.H. Ma'ruf Amin, the Chair of MUI, explained this position further: "I have asked those fundamentalist groups not to make a public statement or to bring their masses to the street without making telling MUI. MUI must know their aspirations first, then sitting together to discuss the issues they want to raise. At the end, MUI will make a joint statement accommodating their views, but at the same time, maintaining a moderate path as reflected by the theology of Ahl al-Sunnah wa al-Jama'ah." (K.H. Ma'ruf Amin, personal interview, Jakarta, 3 July 2006).

<sup>16</sup> Sayf al-Din al-Amidi, *al-Ihkam fi Usul al-Ahkam* (Cairo: Matba'ah Ali Subayh wa Awladih, 1968), Vol. 4, at 273-274.

The treatment of the two statements up to this point is comparable to the process of abrogation relative to *Qur'an* and *Sunnah* texts. If both statements were written at the same time, then either the scholar himself will have indicated that one takes precedence over the other, in which case that statement is treated as authoritative, or he will not have done so. If he has not so indicated, then two major possibilities must be considered. Either he held two mutually contradictory opinions on one and the same case, which is impossible, or he meant to give a choice to his followers. In this case the two statements amount to a single statement. The scheme described by al-Amidi above is in the context of an individual *Mujtahid*; not the collective *Mujtahid* – for example, al-Amidi mentions that Imam Syafi'i has contradictory statements on seventeen different legal issues – so one may find it is difficult to apply Amidi's scheme to the cases of the MUI, the NU and the Muhammadiyah. The membership of the MUI is very loose, and it was created thus by the government, in order to be a forum for ulama from various organisations to meet on Islamic matters. There is no structural hierarchy amongst MUI and others. However, the tendency for the Government is that it defers to or uses only the MUI's opinions, since the MUI is considered as the representative of all Islamic organisations.

Another solution of having a single opinion/position on a very important issue regarding all Muslims is to have consensus (*ijma'*) – as this is a legitimate source of Islamic law. The doctrine of *ijma'*, or consensus, was introduced in the 2nd century A.H. (8th century) in order to standardise legal theory and practice, and to overcome individual and regional differences of opinion. Though conceived as a “consensus of scholars”, in actual practice *ijma'* was a more fundamental operative factor. From the 3rd century A.H., *ijma'* has amounted to a principle of rigidity in thinking; points on which consensus was reached in practice were considered closed and further substantial questioning of them prohibited.<sup>17</sup> Accepted interpretations of the *Qur'an* and the actual content of the *Sunna* all rest finally on the *ijma'*. Some scholars have sought to broaden the classic understanding of *ijma'* (consensus) as only Muslim scholars had a role in reaching consensus; the general public had little significance.<sup>18</sup> Fazlur Rahman argues that the classical doctrine of consultation was in error because it presented consultation as the process of one person, the ruler, asking subordinates for advice; in fact, the *Qur'an* calls for “mutual advice through mutual discussions on

<sup>17</sup> On history of Islamic law, see Ahmad Hasan, *The Early Development of Islamic Jurisprudence* (Islamabad: Islamic Research Institute, 1970); Wael Hallaq, *A History of Islamic Legal Theories* (Cambridge: Cambridge University Press, 1997); Muhammad bin al-Hasan al-Fasi, *al-Fikr al-Sami fi Tarikh al-Fiqh al-Islami* (Madinah:, al-Maktabah al-'Ilmiyah, 1975); Muhammad Yusuf Musa, *Tarikh al-Fiqh al-Islami* (Cairo: Dar al-Ma'rifah, n.d.); Muhammad Khudlari Bek, *Tarikh al-Tasyri' al-Islami* (Beirut: Dar al-Fikr, 1967).

<sup>18</sup> See 'Ali 'Abd al-Raziq, *al-Ijma' fi al-Shari'a al-Islamiya* (Beirut: Dar al-Fikr al-'Arabi, 1948) at 6.

an equal footing”.<sup>19</sup> In this context, the doctrine of *ijma`* is closely related to the concept of *shura* (consultation), and therefore can be implemented as a ‘legislative’ power in the modern sense. One of the justifications for this comes from the sayings of the Prophet:

I (‘Ali bin Abi Talib) said to the Prophet, ‘O, Prophet, [what if] there is a case among us, while neither revelation comes, nor the *Sunna* exists.’ The Prophet replied, ‘[you should] have meetings with the scholars – or in another version: the pious servants – and consult with them. Do not make a decision only by a single opinion.’<sup>20</sup>

As will be discussed later, the attempts of the Government to run *Itsbat* meetings attended by all major Islamic organisations could be seen as being in the spirit of consultation to reach consensus, and also the fact that the Parliament has discussed the Bill on the *halal* certificate reflects the idea of using “legislative” power to reach consensus.

### III. First Case Study: *Hilal*

What would happen when the NU, the Muhammadiyah and the MUI produce different *fatwas* with respect to determining the first day of Ramadan and the first day of *Syawwāl*, as the appropriate ending to *Ramadan*? The Islamic year is a lunar year (based on the moon; not the sun) of approximately 354 days. A new month begins when the new moon is observed in the sky. This is of special importance at *Ramadan*, when Muslims should start or end their fasting. They will observe the sky carefully. The word “observe” invites something of a problem.

Some of the issues are: What if people in one area (Medina) sight the moon, but those in another area (Mecca) don't? Is it okay for them to start and end the fast on different days? Should we follow the moon-sighting in Saudi Arabia (or any other area of the world), or should we in our local area sight it ourselves? What if our location is overcast and cloudy, and the moon is not visible to us? Why do we even bother looking for the moon, when we can astronomically calculate when the new moon is born, and thus when the crescent should be visible?

This is a classic problem dating back to the second century of the Islamic era. The debate has been intensified recently as many Muslim scholars became

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<sup>19</sup> Fazlur Rahman, “The Principle of Shura and the Role of the Ummah in Islam” in Mumtaz Ahmad, ed., *State, Politics, and Islam* (Indianapolis: American Trust Publications, 1986) at 90-91 and 95.

<sup>20</sup> As quoted in ‘Abd al-Halim Uwes, *al-Fiqh al-Islami baina al-Tatawwur wa al-Tsabat* (Madinah: Syirkah al-Madinah al-Munawwarah, n.d.) at 159.

concerned about the inconsistency of sighting reports and the fragmentation of Muslim communities. The disagreements arose because there are two ways to determine the end of Ramadan, namely by *hisab* (astronomic calculation) and by *ru'yah* (sighting the new crescent). Scholars on the two sides of the divide present arguments rooted in Islamic traditions, and often support their views by citing the same Qur'anic and Prophetic sources, or by referring to statements by early Muslim scholars. The division is between scholars who place emphasis on the apparent meaning of the text (*zahir*) and those who emphasise its intended meaning and purpose (*maqasid*). This is an area of *ijtihad* when there is no *Qat'i* rulings.

NU follows the *ru'yah* method, whereas Muhammadiyah subscribes to *hisab*. MUI tries to combine the two methods by employing a method of *imkanur ru'yah* (the visibility of predictions): if the height of the moon during sunset throughout Indonesia is less than two degrees, it would be impossible to observe the moon. The report of moon sighting under this situation would be rejected. But if it is above two degrees, it does not matter whether the moon can be sighted or not, due to it being overcast and cloudy. The next day will be the first of Ramadan, or Syawwal.

The Government has adopted MUI's approach. The current practice in making a decision on this matter is as follows: the government will call for an *Itsbat* meeting attended by astronomers, representatives of all major Islamic organisations, and government officials involved in this issue. The Minister of Religious Affairs will chair the meeting. The meeting will be held on 29 Sya'ban, 29 Ramadan and 29 Zul Qaidah (to determine the first of Ramadan, Syawwal and Zul hijah respectively). The Minister will ask his staff to explain the current position of *hilal* based on the calculation and the prediction of the moon's visibility. Afterwards, he will ask for a report from all Islamic courts as to whether *hilal* has been sighted or not. If there is a witness who has claimed to see the *hilal*, and such testimony is accepted by a local Islamic court, then this will be reported to the *Itsbat* meeting and potentially it will become the basis of the Minister's decision. The Minister will then ask for comments from all major Islamic organisations and astronomers. Following the discussion, the Minister will then make a decision.

In Islamic tradition, there is a legal maxim "*hukm al-hakim ilzamun wa yarfa' al-khilaf*" (the decision by the government is decisive and erases the differences).<sup>21</sup> MUI follows this legal maxim and tends to subscribe to whatever decision has been made by the Government on the issue. Things are different with the other two major Islamic organisations: Muhammadiyah and Nahdlatul Ulama. Muhammadiyah follows *hisab* (astronomical calculation). If the position of the

<sup>21</sup> Syihabuddin al-Hamawi, *Ghamz 'Uyun al-Basha'ir Syarah al-Asybah wa al-Nazha'ir* (Beirut: Dar al-Kutub al-Ilmiyah, 1985), Vol. 5 at 217.

*hilal* is above the horizon (it does not take into account the specific height, as 0.1 degree is enough), then the next day is the first day of a new month. This is labelled as the *wujudul hilal* theory. MUI and the Government will not accept the claim that *hilal* has been sighted if the height is less than two degrees. Previously, NU accepted the testimony or report of sighting of the *hilal* – it did not matter if, from an astronomical viewpoint, it was impossible to observe the moon, owing to the height being less than two degrees. Now, however, the NU accepts the report of a sighting only if the height is two degrees or more above the horizon. The rules are similar for the MUI and the Government.<sup>22</sup>

Muhammadiyah and NU potentially will have different outcomes owing to different methods. They hesitate to follow the legal maxim above, as they tend to see that if the government uses the correct method, it will arrive at the right decision, and only then they will follow it. The tendency is, if the Minister is from the NU, he will accept the sighting report, whereas if the Minister is from Muhammadiyah, he will mainly base his decision on the *hisab* and would ignore the *ru'yah* report. This is because the holder of the office of Minister of Religious Affairs is either a member of the NU or Muhammadiyah.

In other Muslim countries, like Egypt, or even a non-Muslim country like Singapore, such a decision is announced by a Mufti, and the tendency is that all Muslims will follow it. However, Indonesia does not have an official Mufti. The Chair of the *Fatwa* Committee of the MUI is not officially considered to be a Mufti. Since the New Order government (1966-1998) decisions of this type have been delivered by the Minister of Religious Affairs. The involvement of the government minister has not changed in the post-Soeharto era. This could be seen as a politicisation of religion, through the government's involvement in the decision-making process. For instance, there have been rumours that during the Soeharto government, the NU decided on different dates for the ending of Ramadan owing to conflict between Abdurrahman Wahid (the leader of the NU at that time) and President Soeharto.<sup>23</sup> Under the current Susilo Bambang Yudhoyono (SBY) government, the rumour continues. Dien Syamsuddin is critical of SBY government and therefore the Muhammadiyah has celebrated Idul

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<sup>22</sup> "Indonesian Muslims Divided on When Ramadan Should Begin" *The Jakarta Globe* (19 July 2012), online: <<http://www.thejakartaglobe.com/home/indonesian-muslims-divided-on-when-ramadan-should-begin/531546>>; see also Thomas Djamaluddin, "Re-evaluation of Hilaal Visibility in Indonesia", online: <[http://www.staff.science.uu.nl/~gent0113/islam/downloads/djamaluddin\\_2000.pdf](http://www.staff.science.uu.nl/~gent0113/islam/downloads/djamaluddin_2000.pdf)>.

<sup>23</sup> For example, some Muslims ended their fast on Saturday, 4 April 1992, whereas the Government determined Sunday, 5 April, as Idul Fitri. The Government's decision was supported by the MUI and the Muhammadiyah. However, the NU issued an order from its chairman, K.H. Abdurrahman Wahid, to stop fasting on Saturday, but to join the prayers and celebration on Sunday out of respect for the Government decision.

Fitri on different days from that of the government's official decision.<sup>24</sup> It should be added here that, whatever the political impact of NU and Muhammadiyah decisions on this issue, they in fact provide Islamic arguments.

The MUI urges the other two organisations not to declare publicly their own decisions. In particular, Muhammadiyah, owing to its method, is able to predict the first of each month, and they always announce their decision publicly, before having a meeting at an *Itsbat* session. This makes the MUI and the government upset: what's the point of having the consultation and meeting if they already make their own decision? A scientist, Professor Thomas Djamaluddin, also criticises Muhammadiyah's theory on *wujudul hilal*. He claimed that such a theory is too simple, baseless, and does not get support from an astronomical viewpoint.<sup>25</sup> Muhammadiyah has recently responded to those criticisms by not attending the *Itsbat* meeting held on 19 July 2012. The argument is that such a meeting is useless, since the Government will always use the *ru'yah* method and put aside the *hisab* method.<sup>26</sup>

It seems that MUI's argument on the legal maxim above ("*hukm al-hakim ilzamun wa yarfa' al-khilaf*") should be explored further. The use of this legal maxim by MUI has made this organisation like a rubber stamp of the government regarding its decision. Under the caliphate system, there was no separation of powers between the executive, the judiciary and the parliament (*ahlul halli wal aqdi*). The word "al-hakim" in the legal maxim referred to the executive; not to the judiciary, as the judiciary, for practical purposes, was under the executive's power. Through this legal maxim, the government decision would end the differences over public issues. For instance, one cannot escape from gaol simply because one's action is not considered to be a crime according to one particular Islamic school of thought.<sup>27</sup> Whatever the opinions of such a school, once the government declared such an act to be a crime, then it is a crime.

However, under democracy and the separation of powers contained in the Indonesian *Constitution*, Indonesia has established Religious Courts. The power of the executive has been separated from the power of the judiciary. According to *Law No 3 of 2006*, the Court has the authority to accept or not to accept the testimony of sighting reports. Unfortunately, the Court has no power to declare

<sup>24</sup> For instance, Muhammadiyah celebrated Idul Fitri on Tuesday, 30 August 2011, whereas the MUI and the NU followed the government decision to celebrate it on Wednesday, 31 August 2011.

<sup>25</sup> See Thomas Djamaluddin's views in his personal blog, online: <<http://tdjamaluddin.wordpress.com/>>.

<sup>26</sup> Gloria Safira, "Muhammadiyah: Sidang Itsbat Tak Ada Manfaatnya!" *Okezone*, online: <<http://ramadan.okezone.com/read/2012/07/18/67/665086/muhammadiyah-sidang-itsbat-tak-ada-manfaatnya>>.

<sup>27</sup> On Islamic criminal law, see Chapter 9 of Ann Black, Hossein Esmaeli & Nadirsyah Hosen, *Modern Perspectives on Islamic Law* (Cheltenham: Edward Elgar Publishing, forthcoming).

the dates of the first day and the end of Ramadan. The role of the Court stops at witnessing. The practice continues that it is the Minister of Religious Affairs who makes such a decision, as has been mentioned earlier. In order to avoid the politicisation of the decision, and to use the legal maxim in the modern context, it is safe to argue that the Chief Justice of the Supreme Court or at least the Deputy Chief Justice (Ketua Muda) of the Religious Court of the Supreme Court is the one who declares the dates for Ramadan, Idul Fitri, and Idul Adha. *Law No 3 of 2006* should be revised accordingly, in order to give the Court more power on this issue. The court decision should consider both *hisab* and *ru'yah* methods.

It is worth noting that the government did not prevent Muhammadiyah or NU from running the celebrations of Idul Fitri and Idul Adha based on their own decisions, differing from the official date. However, there are some reports that government officials who belong to Muhammadiyah or NU have found some difficulties praying on non-official dates of celebration. The government has reportedly refused to allow Muhammadiyah or NU members to use government facilities to pray on the unofficial dates. It is worth noting that there is no restriction on the use of non-governmental buildings, or public areas. The Government gives two days for the official public holiday, and extends it to seven days for government officials. This should accommodate the differences and also the tradition of “*mudik*” (back to village) during the Idul Fitri celebration.

#### **IV. Second Case Study: *Halal***

*Halal* is a Quranic word meaning lawful or permitted. In reference to food, it is the dietary standard, as prescribed in the Qur'an, the Muslim scripture. The Holy Qur'an regulates Muslims on this matter with a very beautiful phrase, “*halalan thayyiban*” (Qur'an Surah Al-Baqarah: 168). *Halal* means permissible based on Islamic law. *Thayyib* means good, that refers to good quality, healthy, environmentally friendly and respecting of human values. *Halal* and *Thayyib* together build the harmony of life, the balance of the universe. Islam dictates that all foods are *halal* except those that are specifically mentioned as *haram* (unlawful or prohibited). Not only are blood, pork, and the meat of dead animals or those immolated to other than Allah strongly prohibited, it is also required that the *halal* animals be those slaughtered while pronouncing the name of Allah at the time of slaughter.

The *halal* certificate is becoming a global symbol for quality assurance, both for Muslims and companies engaged in global trade. It is no longer a simple matter of *halal* – *haram* in a traditional sense. Johan Fischer, for instance, examines the ways in which Malay immigrants create spaces for *halal* consumption in London, thereby elucidating the complex social, economic, cultural, and political interrelation between Malay individuals, their host country,



and their country of origin.<sup>28</sup> London is home to a substantial number of Malays and Malaysian political and religious organisations. Muslim immigrants seek to find *halal* food. But how, where and what they can eat depends on many things: Islamic authorities who issue *halal* certificates, food suppliers, information on *halal* butchers and shops, and so on.

The development of new technology in food processing, cosmetics, and medicine, to name a few fields, along with the potential market of a few trillion dollars, creates some challenges for Muslim scholars and leaders. An understanding, followed by cooperation amongst Muslim scholars and leaders on one side, and scientists, who investigate and audit the products, together with companies and business certifiers including related government officers on the other side of the spectrums, is a must. This is to ensure that all *Halal* products/ingredients must be prepared and stored separately from non-*Halal* food items, and there must be a clear indication to distinguish them. Cross-contamination between the equipments/utensils used for *Halal* and non-*Halal* food, which may occur during collection, washing or storing should be avoided. Some problems arise due to the different schools of thought in Islam, different techniques of audit and investigation among scientists, and also among business interests and competitors.

To illustrate this issue further, take the example of gelatine. The use of gelatine is very common in many food products. The source of gelatine is not required to be identified by the Food and Drug Administration (FDA) on product labels. When the source is not known, it can be from either *halal* or *haram* sources, hence questionable. Muslims avoid products containing gelatine unless they are certified *halal*. Common sources of gelatine are pigskin, cattle hides, cattle bones, and, to a smaller extent, fish skins. *Halal* products use gelatine from cattle that have been slaughtered in an Islamic manner or from fish.

In the Islamic legal tradition, the Hanafi school proposed widely to use the method “change of state” (*istihalah*) to classify food.<sup>29</sup> In the *istihalah* method it is recognised that wine is haram; however, if the same wine turns to vinegar it becomes *halal*, this being based on the hadith of the prophet.<sup>30</sup> The use of the vinegar derived from wine is *halal* as long as no wine remains in it. From these examples, it becomes clear that if an unlawful food item changes state, then the original ruling also changes. Can we apply this concept to gelatine from pigskin? The Hanafi school might support this assertion and say that gelatine from pigskin is *halal*. However, the Syafi’i school takes the view that if *istihalah* is conducted

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<sup>28</sup> See Johan Fischer, *The Halal Frontier Muslim Consumers in a Globalized Market* (Hampshire, U.K.: Palgrave Macmillan, 2011).

<sup>29</sup> Ibn Abidin, *Hasyiyah Radd Al-Muhtar ‘ala al-Durr al-Mukhtar* (Riyadh: Dar al-Alam al-Kutub, 2003), Vol. 1 at 314.

<sup>30</sup> Muslim, *Shahih Muslim* (Beirut: Dar al-Qalam, 1987), Hadith Number: 2051.

through normal and natural process the changed product will be considered *halal*. If, however, the product is engineered via chemical or mechanical means, it will not be considered *halal*.<sup>31</sup> Different rulings will have different outcome. So, one could imagine if *halal* certifier A follows the Hanafi school and issues *halal* certificate, whereas *halal* certifier B refuses to issue *halal* certificates for a particular product using gelatine from pigskin, as they follow the Syafi'i school. Which school should we follow? Other products raising a similar issue include the use of alcohol in medicine and cosmetics products, or rennet and other animal-based enzymes in the cheese-making processes.

Indonesia is considered to be one of the leading actors in *halal* certification matters. Indonesia is, for instance, the Chair of the World *Halal* Council (WHC), which is a federation of *halal*-certifying bodies worldwide after these bodies have gained international and global acceptance of their *halal* certification and accreditation processes.<sup>32</sup> As it is the largest Muslim country in the world, the Indonesian market for *halal* products is huge. The Indonesian Council of Ulama (MUI) has established the MUI Assessment Institute for Foods, Drugs and Cosmetics (LPPOM MUI) with effect 6 January 1989, where Muslim scientists and auditors work together with the *Fatwa* Committee, consisting of experts and scholars of Islamic studies.<sup>33</sup>

The current procedure to obtain a *halal* certificate is as follow. The company first makes an application. The LPPOM will check the application, and then send their auditors to the company. They will check all documents relating to the raw material, the whole process of production, and take samples if necessary. The auditors will also visit production locations (every location, branches and suppliers), at the factory locations in the country of origin and the factory locations for the base form of raw material. The results of auditing will be evaluated in an Auditor Team meeting. If all the criteria of *halal*-ness have been met, the report will be submitted to the *Fatwa* Committee of the MUI. The *Fatwa* Committee will decide the *halal* status of the product. Once the Committee is satisfied, an MUI *Halal* Certificate will be issued, which will be valid for 2 (two) years. The scientists (Chemistry, Food Science, Biochemistry, Agro industry, Biology, Physics, Veterinary) do the investigation and laboratory check of the ingredients, while the "ulama" examine the report from the scientists, using classic and modern *fiqh* literature, before issuing a *halal* certificate. Therefore, the

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<sup>31</sup> Wahbah al-Zuhayli, *al-Fiqh al-Islamy wa Adillatuhu* (Beirut: Dar al-Fikr, 1997), Vol. 7 at 5265.

<sup>32</sup> World Halal Council website, online: <<http://www.worldhalalcouncil.com/>>.

<sup>33</sup> LPPOM website, online: <<http://www.halalmui.org/>>.

MUI argues that a *halal* certificate is actually a written *fatwa*, issued by the MUI, just like any other *fatwas*.<sup>34</sup>

It is important to note that the MUI is not a state body; so its *halal* certificate is not considered a government decree/decision. Since Muhammadiyah and Nahdlatul Ulama do not issue *halal* certificates at the moment, the MUI is the only *halal* certifier for Indonesia.<sup>35</sup> As a comparison, Singapore and Malaysia have one authorised certifier each (MUIS and JAKIM respectively). In Australia, there are about fifteen *halal* certifiers.<sup>36</sup> This raises the question of plurality within different traditions and schools in this matter. Should we have a standard criteria and requirement on *halal* certificates?

Although it is not compulsory for all local products to have the MUI's *halal* certificate, all imported meats must have a *halal* certificate from foreign certifiers recognised by the MUI. Indonesia has claimed that both their huge market and standard of *Halal*-ness must become the main reference, and therefore, through the MUI, they have the power to recognise or not to recognise the foreign *halal* certifiers, all around the world. The government's ambition is to make the MUI's standard as a world *halal* standard. It has been estimated that the trade value of *halal* products in the global market has reached more than \$US600 billion, and that the trade will keep increasing at 20 to 30 per cent annually. The potential market for *halal* products is the world's Islamic population, which is in the order of 1600 million people. Of this total, Indonesia contributes 180 million; India, 140 million; Pakistan, 130 million; the Middle East, 200 million; Africa, 300 million; Malaysia, 14 million and North America, 8 million.<sup>37</sup>

The Indonesian Ministry of Religious Affairs (MORA) is well aware of the size of this billion-strong market. They are not happy with the fact that they are not involved in the certification process. This situation has led the Government to draft the Bill on *Halal* Products (RUU *Jaminan Produk Halal*) two years ago, and it is clear that their intention is to reduce the role of the MUI. They propose that the MUI's role be limited to issuing *fatwas* on *halal* products,

<sup>34</sup> "MUI Minta DPR tak Alihkan Sertifikasi *Halal*" *Republika* (20 April 2012), online: <<http://www.republika.co.id/berita/nasional/umum/12/04/20/m2rnto-mui-minta-dpr-tak-alihkan-sertifikasi-halal>>.

<sup>35</sup> It is reported in the media that the NU is considering to issue the *halal* certificate as well. "Keluarkan Label *Halal*, PBNU Tidak Serobot Lahan MUI", online: Detik.com <<http://us.news.detik.com/read/2012/01/31/000232/1829883/10/keluarkan-label-halal-pbnu-tidak-serobot-lahan-mui>>.

<sup>36</sup> See the list of Islamic organisations who have an approved arrangement with the Australian Quarantine and Inspection Service (AQIS) for the certification of red *halal* meat and red meat products for export, online: <<http://www.daff.gov.au/aqis/export/meat/elmer-3/list-islamic-halal-certification>>.

<sup>37</sup> Endang S. Soesilowati, "Business Opportunities for *Halal* Products in the Global Market: Muslim Consumer Behaviour and *Halal* Food Consumption" (2010) 3 *Journal of Indonesian Social Sciences and Humanities* 151-60.

whilst the MORA will do the audit, and issue *halal* certificates. The MUI has rejected such a proposal.<sup>38</sup> The Minister personally has approached the General Chairman of the MUI, but the MUI insists it retains its role.<sup>39</sup> The argument of the Minister is that *halal fatwas*, audit, and certification cannot be in the hands of one single organisation. It is a monopoly, and potentially it could give the company or business person responsible the opportunity to deal directly with the leaders of the MUI to negotiate prices and fees. The MUI rejects this argument, and has approached Islamic political parties in the Parliament to change or revise the Bill. Owing to the MUI's rejection, the Bill has not yet been passed.<sup>40</sup> Instead, the Parliament has also initiated a draft process for the Bill on *halal*. Under the current draft, the Bill drafted by the Parliament has also reduced the power and authority of the MUI. Up until the time this article was being finalised, there were still some issues on which the Government and the parliament had not yet reached agreement.

Another option being considered is that *halal* certification should be open to any Islamic organisation, including Muhammadiyah and Nahdlatul Ulama. If this proposal was accepted, then the MUI's standard would not become the only *halal* standard in Indonesia, let alone in the world. The *fatwa* could come from the MUI, however, there would be multiple bodies to do the audit or investigation of the ingredients. There would be also multiple institutions to issue *halal* certificates based on *fatwas* and the audit reports. Would this indicate plurality of *halal* services, or would this lead to chaos? If this option was accepted, there would be different *halal* certifiers and it would be up to the (free) market to decide which one was trustworthy and *bona fide*. I imagine there would be a cost reduction as well, owing to competition amongst *halal* certifiers. The next question would be: if there is dispute, can the parties (customer, company and *halal* certifier) go to the Religious Court? *Law No 3 of 2006* does not give the Religious Court the power to solve this issue, as its jurisdiction is limited to family law and economic *Shari'a* matters. The parties would need to go to the "secular" courts, unless *Law No 3 of 2006* was amended.

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<sup>38</sup> "MUI: Sertifikat *Halal* Harus Ditangan Kami", online: Detik.com <<http://us.news.detik.com/read/2012/04/20/134802/1897354/10/mui-fatwa-halal-harus-di-tangan-kami>>.

<sup>39</sup> "Wasiat Menag: Sertifikasi *Halal* Harus oleh Pemerintah" *Republika* (1 October 2009), online: <<http://www.republika.co.id/berita/dunia-islam/fatwa/12/01/13/78925-wasiat-menag-sertifikasi-halal-harus-oleh-pemerintah>>.

<sup>40</sup> The debate on the Bill can be read here: Alamsyah M DJafar & Wagiman, eds., *Politik Halal di Indonesia: Dilema Negara Majemuk Menegakkan Konstitusi* (Jakarta: The Wahid Institute, 2011).

## V. Concluding Remarks

After examining the two case studies above, a number of observations can be made here. Firstly, pluralism in Islamic society cannot be avoided. In fact, such diversity of views has been one of the prominent characteristics of *fiqh* throughout its history. Although the differences between scholars has produced diverse, and often conflicting, opinions, and, despite the fact that scholars have frequently stressed the need for unifying laws, difference of opinion has been continuously respected in principle.

Secondly, the Indonesian government has attempted to accommodate differences regarding observing the *hilal* for Ramadan, Idul Fitri and Idul Adha, but in the end the decision has to be made, as the community expects there to be an official decision, to avoid confusion. The tendency is for the Government to join with the MUI in reaching a decision. This has left other major organisations like Muhammadiyah and Nahdlatul Ulama sometimes in different positions to that of the Government. I propose that instead of the Government, it should be the Religious Court, under the Supreme Court, which makes such a decision.

Thirdly, the MUI has different views to those of the Government, in regard to *halal* certification matters, whereas Muhammadiyah and Nahdlatul Ulama, so far, have not become involved in this issue. I propose that other organisations or institutions should also be able to issue *halal* certificates, in order to avoid a monopoly and to reduce costs. It is not appropriate for the MUI to get involved in the business side of *halal* certification. They should maintain their original role of providing *fatwa* and guidance, just like NU and Muhammadiyah.

Fourthly, the differences amongst Islamic organisations *vis-à-vis* the Government could become more complex when political and business interests also play a role. Competition would lead to a contest over Islamic authority, in a plural society like Indonesia. In this era of democracy, unlike in Soeharto era, the Government could no longer force compliance with its decisions on religious matters. At the other end of the spectrum, Muslim leaders should not insist that their opinion is the correct one and therefore stop the dialogue. Classic Muslim scholars such as Imam Abu Hanifah, Imam Syafi'i and others have reminded us that "our opinion is a right one with the possibility of being wrong and others' opinions are wrong ones with the possibility of being right."<sup>41</sup> Open dialogue is the key for understanding. After all, this is a matter of *ijtihad* or interpretation. The Prophet said that "When a jurist makes *ijtihad* and reaches a correct conclusion, he receives a double reward; and if his conclusion is incorrect, he still

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<sup>41</sup> See for example Ibn Abidin, *Hasyiyah Radd Al-Muhtar 'ala al-Durr al-Mukhtar* (Riyadh: Dar al-Alam al-Kutub, 2003), Vol. 1 at 115.

receives a single reward”.<sup>42</sup> This is seen as the basis of the plurality of interpretation in Islam.

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<sup>42</sup> al-Bukhari, *Shahih Bukhari* (Beirut: Dar al-Qalam, 1987), Hadith No: 6,805; see also Ahmad Zaki Hammad, *Islamic Law: Understanding Juristic Differences* (Indianapolis: American Trust Publications, 1992) at 25.